



THE NAVAJO NATION

Telecommunications Regulatory Commission *Office Of The President and Vice President*

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Joe Shirley, Jr.
President

April 16, 2008

Bennie Shelly
Vice President

Kevin J. Martin, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ernest Franklin, Jr.
Executive Director

RE: Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-4 (Identical Support Rule NPRM), FCC 08-5 (Reverse Auction NPRM)

Thomacita White
Administrative Assistant

Dear Chairman Martin:

Steve L. Grey
Chairperson

The Navajo Nation Telecommunications Regulatory Commission (NNTRC) submits these comments for consideration in regard to the Federal Communications Commission's proposed rules FCC 08-4, 08-5, and 08-22. As the Commission notes in Footnote (1) of its report, one of the statutory principles underlying the Commission's policies is that "consumers in all regions of the nation should have access to and pay rates for telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."

Marlene A. Lynch
Vice Chairperson

Deswood Tome
Secretary/Treasurer

Unlike other tribal communities and reservations where a single non-tribally owned or a tribally owned telecom entity is the primary service provider, in the Navajo Nation, the NNTRC believes that marketplace competition is a desirable regulatory goal and should be promoted.

Leland Leonard
Commissioner

Currently, the Incumbent Local Exchange Carriers for the Navajo Nation are hampered by their inability to acquire new rights-of-way and therefore cannot expand to meet the needs of the Navajo communities. Even today, large parts of the Navajo Nation have no landline basic telephone services. As a result, the Navajo Nation and its wireless telecommunication partners have deployed Wi-Fi systems, two-way satellite systems, cellular phone systems, point to point microwave systems, and point to multi-point communications systems to provide connectivity to 70% of the Navajo Nation's 27,000 square miles of federally entrusted land. The Navajo Nation needs these wireless systems because federally entrusted land, with its lengthy process of obtaining rights of ways (ROWs), can not, in the near future, be wired to accommodate the growth of Navajo communities. By pursuing wireless technology we are able to circumvent the difficult and long process of obtaining ROWs, and to quickly and efficiently provide vital services to our people.

Bobby Begaye
Commissioner

Stephen Nez
Commissioner

Although these comments may not, on their face, pertain directly to competition issues, the NNTRC believes that all of these recommendations, if the FCC were to adopt them, would do much to create and enhance conditions that would foster competition on the Navajo Nation. The NNTRC's comments are as follows:

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Letter to Kevin J. Martin

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1. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), Part 12
The NNTRC agrees with the proposal of the Federal-Joint Board and the Commission to base High Cost support on the competitive ETCs' own investment cost. The ILECs on the Navajo Nation will not expand in the near future and therefore the Nation encourages its wireless providers to invest and bring much needed services to the Navajo communities. The subscription lines available from the competitive ETCs far out number those of the ILECs. It would be unfair to these competitive ETC wireless carriers if the support they received was based on the very limited amount of lines available from the ILECs.
2. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), Part 13.
The NNTRC agrees that "each competitive ETC should file cost data with the commission or the relevant state commission – whichever approved, or subsequently approves, its ETC applications – on an annual basis and line-count data on a quarterly basis." In our Case, the NNTRC is the governing regulatory body of the Navajo Nation for Telecommunication activities and the recommendation of ETC approvals to the FCC. Therefore a competitive ETC should report its cost data to the NNTRC before it is filed with USAC.
3. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), Part 16.
The Navajo Nation has two incumbent LEC study areas and a couple of competitive ETCs that services its communities. The NNTRC would certainly like to keep track of the cost investments made in each geographical study area on the Navajo Nation. This type of information would be very helpful in gaining support from Navajo Nation and further the deployment of telecommunication services in the rural areas of the Nation.
4. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), Part 17.
The NNTRC agrees that wireless spectrum costs should be included in high-cost support whether it is obtained by auction, the open market, or by lottery. The Navajo Nation is a very undesirable area and any spectrum used for telecommunication services within the boundaries of the Navajo Nation should be included in High Cost support.

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5. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), Part 21.
The ETC designation is very important on the Navajo Nation and when an entity does obtain ETC status it should be allowed to project its subscribership out to 5 years so it receives the support needed to develop and sustain connectivity to the rural areas of the Navajo Nation. The NNTRC feels that after 5 years of development, the ETC should be able to switch over to the actual number of subscribers.
6. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), Part 22.
The NNTRC supports the notion of reviewing and determining wireless high-cost support on a separate basis from existing wire line mechanisms, because of the differences in equipment, types of services, reoccurring operation and maintenance cost.
7. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), Part 25.
The Navajo Nation is concerned about the Joint Board proposal to cap HCLS disbursements to wireless and other carriers. A cap on the financial resources used to enhance the wireless infrastructure will severely impact the growth of the Navajo Nation. Furthermore, placing a cap on wireless providers will limit competition, which in turn will affect the efforts of the ILEC to expand its telecommunication infrastructure on the Navajo Nation.
8. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (Identical Support Rule NPRM), Part 26.
A majority of these systems were developed and sustained through the Universal Service Fund system to support distance learning and Tele-health on the Navajo Nation. The provision, maintenance, and upgrading of these telecommunication facilities and services will also usher in support for public safety's E911 systems, support sustainability of our economic and community developments, and help maintain an E-government environment in an extremely rural area of the United States. The growth of the Navajo Nation depends on the wireless telecommunications services provided by the various telecommunications carriers.

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9. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 12.
The NNTRC agrees with the commission that an entity must hold an ETC designation in order to bid for high cost support. In the case of designation over tribal lands, the ETC should obtain the approval of the tribe's regulation body along with the FCC.
10. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 13-17.
The NNTRC supports the concept of single winners in both landlines and wireless categories. Where the lowest bid amount, between the two, will be awarded 100% of its bid and the other will be awarded 75% of the lowest bid. The NNTRC believes that this model should encourage both entities to penetrate rural areas and increase competition between the wireless and wireline providers. In the case of the Navajo Nation, there is a need to encourage land based systems to further penetrate the ILEC study areas. The competition between the two should create incentives for both providers to invest and provide better services to rural areas of the Navajo Nation.
11. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 18.
The NNTRC supports the per subscriber distribution model to provide an incentive to reach as much subscribers in a study area within a given time period.
12. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 19-22.
The NNTRC feels that the geographical area for high cost support should use the ILEC's current study area. The Navajo Nation has two ILEC study areas and these areas are the most rural areas in the United States and therefore would provide a good foot print for high cost support.
13. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 23-25.
The ILEC of the Navajo Nation should maintain their obligations of carrier of last resort and be able to participate in the reverse auction to compete for high cost support.

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13. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 23-25 cont.-.
If the ILEC fails to penetrate its study area with their facilities in a given time period, then the winner of the previous auctions should inherit the obligations of carrier of last resort. If an ETC, that has won the reverse auction, does not fulfill its universal service obligations, then the state in conjunction with the tribal nation should issue penalties and fees
14. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 26-27.
The NNTRC agrees with all the ETC Designation Order requirements and that they should apply to all ETCs that participate in the auction. Furthermore the NNTRC agrees that state and tribes are able to add additional requirements to make sure auctions winners meet their obligations.
15. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 28-29.
The Navajo Nation recently amended its rights-of-way policies to allow for rapid deployment of telecommunication services. Therefore ETC's should have minimum obstacles to make commitments and have the ability to provide the needed support services within a study area. The NNTRC agrees with the concept of using and monitoring a five year plan produced by the ETC applicant to show progress or the lack of progress.
16. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 30.
The NNTRC feels that ETCs should offer local calling plans, to those not eligible for lifeline/linkup, similar to that of the ILECs because of the subsidies they are receiving from high cost allocations. The ETC wireless providers should provide unlimited calling for their customers for prices that are similar to the ILEC's basic calling plans within the ETC's designated areas.
17. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 31.
The NNTRC feels that all ETCs should provide equal access to other carriers because of the subsidies they are receiving from high cost allocations. The ETCs should share.

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18. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 32.
The NNTRC strongly feels that both the ILECs and ETCs maintain the ability to function in emergency situations. Especially for auctions winners who will be using high cost allocations to deploy their systems. The auction winner should also include redundant power, radios, alarm systems, and traffic spike protocols in their five year plans.
19. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 33.
The NNTRC agrees that all ETCs should comply with CTIA's Code for wireless services as the minimum requirements for customer protection.
20. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 34.
The NNTRC agrees that ETC's should provide proof of financial capabilities to deliver telecommunication service in their designated area.
21. Federal-State Joint Board on Universal Service --WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5 (Reverse Auction NPRM), Part 39-40.
The NNTRC agrees to one time auction every 4 years. The awarded ETC should have a 5-year plan that should be amended during the first year after auction.

Although the NNTRC has submitted these comments today via electronic filing, the NNTRC is also transmitting via fax this signed letter to the FCC's Liaison to Tribal Governments at the Office of Intergovernmental Affairs. The NNTRC appreciates the opportunity to submit comments and looks forward to working with the appropriate FCC staff in addressing the telecommunications needs on the Navajo Nation by amendment of selected rules and regulations.

Sincerely,

Ernest Franklin, Jr., Executive Director
Navajo Nation Telecommunications Regulatory Commission

Cc: Commissioner Deborah Taylor Tate
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Robert M. McDowell
Commissioner Lisa Polak Edgar
Commissioner Larry S. Landis
Commissioner John D. Blake
NNTRC Commissioners